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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/774,978

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Tilman Lorenz

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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
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EXAMINER

PERRIN, JOSEPH L

ART UNIT

PAPER NUMBER

1792

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/774,978	Applicant(s) LORENZ ET AL.	
	Examiner Joseph L. Perrin, Ph.D.	Art Unit 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-21, 23-29 and 37-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 37-40 and 43-49 is/are allowed.
- 6) ☐ Claim(s) 19-21, 23-29, 41, 42 and 50-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20080908</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 11 August 2008 have been fully considered but they are not fully persuasive.
2. Regarding the rejection under § 112, first paragraph, applicant argues that “the disclosure conveys with reasonable clarity to those skilled in the art that the features of claims 40 and 47-49 were in possession of the Applicants, as of the filing date.” To support their position, applicant points to pages 2 and 9 of the original disclosure as well as Figure 3. However, it appears applicant has missed the thrust of the Examiner’s position. The issue is not whether applicant has disclosed a specific configuration, i.e. a species, readable on the broadly claimed new limitations, in the original disclosure but rather whether applicant has support for disclosing a specific configuration and newly introducing claims language to capture the broader scope of the feature, i.e. the genus. This situation is analogous to applicant disclosing a specific washing machine, such as a vertical axis washing machine, and then introducing broad claim language to encompass all washing machines including vertical, horizontal and inclined. Unquestionably, such limitation is improper broadening of scope and constitutes new matter. On page 13 of the response, applicant seems to acknowledge the disclosure of a specific “species” configuration in showing the various additional features of the specific embodiment in Figure 3 including structures with structural cooperative relationship between elements which are not claimed. Thus, applicant's newly

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introduced limitation of "wherein said lever device converts movement of said linen treatment device to translational movement at said sensor" is broader in scope than the original disclosure as filed and the configuration argued and shown, specifically, pages 2 and 9, and Figure 3 of the original disclosure. Therefore, this improper broadening of scope constitutes new matter as applicants were not in possession of such broad features (i.e. the entire genus of converting movement to translational movement) as clearly evidenced by the original disclosure as filed which supports a specific configuration for performing this translational movement and not the broadly claimed subject matter as purported by applicant. Simply stated, applicant does not have support for other structural configurations within the scope of the newly introduced broadened language. Applicant is required to either include the structure argued on page 13 or remove the broadened scope including the new matter to alleviate this improper broadening of scope.

3. Similarly, regarding the rejection under § 112, second paragraph, applicant argues that the claims are not indefinite because the structural configuration is supported on pages 2 and 8, and in Figure 3 as discussed above. Again, it appears applicant has missed the thrust of the Examiner's rejection. It is not whether or not one skilled in the art would understand the meaning of the claimed language but rather if applicant has failed to particularly point out and distinctly claim the invention (see MPEP 2172.01). Applicant again argues limitations which are not being claimed which appear to support the Examiner's position that applicant has failed to particularly point out and distinctly claim the invention. It is the claims that define the claimed invention, and it is

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claims, not specifications that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064. Moreover, applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In the instant case, and similar to above regarding the broadly claimed new matter, applicant's claims are missing essential structure in order to perform the claimed function. Thus, without the missing structural limitations, argued on page 15 of the instant response, there is a gap between the elements on how the claimed apparatus is capable of performing such conversion via a lever resulting in applicant failing to particularly point out and distinctly claim the invention. Clearly, one skilled in the art would not be able to use or operate the claimed apparatus without the omitted and necessary structural elements (argued by applicant but not claimed) and that the structural elements are essential to the operation of the apparatus, and thus, this omission of necessary elements renders the claimed invention indefinite. Applicant is urged to include the structure argued to particularly point out and distinctly claim the invention and satisfy the requirements of § 112, second paragraph.

Independent claims 19, 29, 42 and 50

4. Regarding the § 103 rejection of independent claims 19, 29, 42 and 50 over BUGNACKI and SMITH, applicant argues that the substitution the switch components would not be obvious due to "stiction problems". However, "stiction" is not claimed or discussed in the instant invention. Furthermore, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of

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the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Thus, this argument is unconvincing.

5. Regarding applicant's allegation that "the Office Action fails to explain or establish how such a combination would operate for its intended purpose". Applicant's attention is directed to the 103 rejection which clearly describes that both SMITH and BUGNACKI are analogous washing machine art and both disclose sensors for detecting an imbalance. Thus, applicant's purported position is unconvincing as the record is clear how the combination would operate for its intended purpose.

6. Applicant further argues that the weight of SMITH is made of lead (according to SMITH, it is "preferably" lead and not limited to lead) and that the BUGNACKI sensor formed from a "silicon substrate", and that the difference of materials would prevent operation "without substantially reconstructing or redesigning the elements of the Smith et al. reference or the Bugnacki reference". The Examiner emphatically disagrees and submits that applicant has grossly underestimated the common sense, level and skill generally available to one having ordinary skill in the art. First and foremost, applicant's arguments are purely speculative and fail to provide any evidence to support such allegations, particularly since both the SMITH and BUGNACKI sensors require movement to perform their intended function regardless of their materials. Even if, assuming *arguendo*, applicant's position had merit, surely it would be easily understood

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by a skilled artisan that changing materials or adding materials/mass would control the weight without any substantial reconstruction or redesigning of elements. Simply stated, such is not rocket science and well within the general knowledge of a skilled artisan. Accordingly, this argument is not convincing.

7. On page 20, applicant further alleges one would not be motivated to substitute the sensor of BUGNACKI for the ball of SMITH because it “would limit or reduce the sensitivity of the Bugnacki sensor to acceleration.” Once again, applicant argues the bodily incorporation of the references which is not persuasive for reasons previously indicated. Moreover, applicant’s arguments are considered speculative and unsupported and the position is maintained that the substitution of the sensor of BUGNACKI for the ball of SMITH would result in the same predictable result in sensing an imbalance, as clearly indicated in the Office Action.

Dependent claims 21, 40 and 41

8. Regarding the § 103 rejection of dependent claims 21, 40 and 41 over BUGNACKI and SMITH, applicant solely argues claim 40. As such, claims 21 and 41 remain rejected for reasons of record. Regarding claim 40, applicant argues that the claim is not intended use and “further defines the structural attributes between the interrelated structural components of the claimed lever device and the sensor.” This is not persuasive because the only structural limitation claimed is a “lever”. Moreover, it is noted that the lack of structural limitations in the claim resulted in the issues above under § 112, first and second paragraph. The position is maintained that the prior art of record is fully capable of performing the intended use as claimed. As can be readily

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seen in SMITH, the starting and finishing point of the horizontal movement are the same and given the short distance of the movement, such movement is substantially linear and reads on “translational” (see Figure 4). Most clearly, such language does not distinguish from this movement described in SMITH, much less *patentably* distinguish. Applicant is once again urged to define the claimed apparatus by the necessary structure required to perform this intended use, as argued for this claim (see previous rejections under § 112).

Dependent claims 26-28

9. Regarding the § 103 rejection of dependent claims 26-28 over BUGNACKI and SMITH, applicant argues reason of same for independent claim 19. This is not persuasive for reasons of same indicated above for claim 19. Additionally, applicant argues that the claimed combination fails to disclose “...said sensor coupled to a soapy water container”. The Examiner disagrees. As previously noted and evidenced by Figure 1 of SMITH, the sensor housing (32) and all sensor components associated therewith (including levers) are connected to motor which is directly connected to the washing machine container (21). While such structure is an indirect connection, such structure reads on the “coupled” language as claimed as the function is exactly the same, i.e. the sensing of imbalance by being connected, directly or indirectly, to the wash tub. Simply put, there is nothing in the broad recitation of two structures being “coupled” which requires direct contact but rather simply a connection between the two structures. This is precisely what is shown in Figure 1 of SMITH. Even if, assuming *arguendo*, one were to require the claimed sensor to be “directly coupled” to the wash

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tub, this would be an obvious rearrangement since such rearrangement would produce the same predictable result of sensing a load imbalance as both configurations are connected to the tub in order to provide information indicative of sensing an imbalance. Thus, it is entirely unclear how the coupling of the sensor to the tub, either directly or indirectly, results in a patentable modification as both "coupling" configurations produce the same predictable result of sensing an imbalance. As such, whether or not the sensor is directly or indirectly coupled to the washing machine does not appear to patentably distinguish because neither appears to produce anything unpredictable or unexpected (i.e. the result of sensing imbalance is predictable in both configurations).

10. Applicant further argues that YOUN does not teach the claimed sensor coupled to the soapy water container. This is not persuasive because the SMITH teaches such coupling and is relied upon for such teaching. Applicant is reminded that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

New claims 51-56

11. Since these claims are not under a rejection, any rejections of the claims will be discussed in any future rejections.

Information Disclosure Statement

12. The information disclosure statement filed 08 September 2008 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the

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relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 112

13. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

14. Claims 40 & 47-49 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In claims 40 & 47, the recitation “converts movement of said [soapy water container or linen treatment device] to translational movement [at said sensor or of the sensor on the rail, respectively]. Note that neither claim 40 nor 47 are part of the original disclosure as filed. Accordingly, applicant's broadening the scope of claims 40 and 47 is considered new matter because said improper broadening includes any structural configuration, including those not contemplated by applicant or disclosed by applicant. While applicant provides a single structural embodiment which converts *rotational* movement into *translational* movement (i.e. a species as described on page 8, line 1 *et seq.*), applicant fails to provide any

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support for the broader scope of all structural configurations capable of converting “movement of a container to translational movement with respect to the sensor”. This broadening of scope reasonably conveys and evidences that applicant did not have possession of the claimed invention and all possible configurations associated therewith but rather only the configuration/embodiment reasonably described on page 8 of the original disclosure as filed. Accordingly, the broadening of scope outside the description in the specification constitutes new matter.

15. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

16. Claim 40 & 47-49 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. In claims 40 & 47, the omitted elements are: adequate lever structure which is capable of converting movement of the linen treatment device to translational movement of the sensor. Notwithstanding the fact that the claimed movement conversion is claimed without a modicum of structure constitutes new matter (see above), applicant’s original disclosure is silent with respect to embodiment capable of performing such intended use other than with the essential structure associated with the embodiment of page 8. Without such structure, there is a gap between the elements on how the claimed apparatus is capable of performing such conversion via a lever. Thus, applicant has failed to particularly point out and distinctly claim their invention. Applicant is reminded that although the claims are interpreted in

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light of the specification, limitations from the specification are not read into the claims.

See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Clarification and correction are required.

Claim Rejections - 35 USC § 103

17. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

18. Claim 19, 21, 29, 40-42, 50 and 54-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over SMITH in view of BUGNACKI.

Re claims 19, 21, 29, 41, 42 & 50, SMITH discloses a washing machine with a lever device (46) and sensor (ball 56 and associated switch structure constituting a sensor), both the lever and sensor being coupled/connected to a washing machine tub (12), the sensor coupled/connected to the tub via the lever device, for the purpose of sensing load imbalance (see Figures 1-2 and relative associated text). Re newly added claim 40, the “wherein” clause is directed to intended use and fails to provide any adequate structure to further define the claimed washing machine, for instance, in the combination of such use language with structure of the lever device. Manifestly, the tub of SMITH provides rotational movement and the sensor with lever (46) provides sensing along translational axis (30) and therefore is fully capable of performing the intended use of claims 40 & 47. However, SMITH does not disclose the sensor as being a temperature profile measuring sensor. BUGNACKI teaches that is known to provide a washing machine with a temperature profile measuring sensor in order to provide an

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inexpensive, high-reliable sensor and to avoid stiction problems associated with mechanical sensors (see page 9). Re claims 54-56, both SMITH and BUGNACKI disclose sensors for detecting imbalance and are fully capable of detecting the different types of imbalance including along/with respect to a rotational axis of the container, which is also a direction of the imbalance.

Therefore, the position is taken that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have substituted the mechanical sensor of SMITH with the temperature profile sensor of BUGNACKI in order to achieve the aforementioned known advantages associated therewith. Moreover, there would have been a reasonable expectation of success in providing one washing machine imbalance sensor for another since both references are analogous art and the imbalance sensors are functional equivalents.

19. Claims 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over YOUN in view of BUGNACKI and SMITH.

YOUN discloses a washing machine (100) with load sensor for sensing multiple parameters including imbalance and load size, a controller (130) for calculating the imbalance and load size, and a display device (140) for displaying the operating state of the washing machine with sense signal generation means for generating a fault sense signal indicative of a machine fault (see entire document, for instance, Figure 2 and relative associated text and paragraph [0014]).

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The combination of SMITH and BUGNACKI (see previous rejection) teach that it is known to provide a washing machine with a temperature profile measuring sensor as the imbalance detecting sensor in order to provide an inexpensive, high-reliable sensor and to avoid stiction problems associated with mechanical sensors. Therefore, the position is taken that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the washing machine of YOUN with the temperature profile sensing means of SMITH and BUGNACKI in order to achieve the aforementioned known advantages associated therewith. Moreover, there would have been a reasonable expectation of success in providing one washing machine imbalance sensor for another since the references are analogous art and the imbalance sensors are functional equivalents.

20. Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over SMITH in view of BUGNACKI as applied to claim 50 above, and further in view of YOUN. SMITH and BUGNACKI, *supra*, disclose the claimed invention with the exception of a measuring device for determining mass. YOUN teaches that it is known in the washing machine art to incorporate a sensor which performs both sensing an unbalanced state and a load amount (i.e. mass). Therefore, the position is taken that it would have been obvious to one skilled in the art to utilize the measuring device of YOUN for sensing mass and imbalance in the washing machine of SMITH and BUGNACKI for the intended purpose of the sensor, i.e. sensing load size and load imbalance. Aside from

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the evidence of record, the Examiner notes that it is common knowledge in the washing machine art to provide a measuring device for sensing load size and load imbalance.

21. Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over SMITH in view of BUGNACKI and YOUN as applied to claim 51 above, and further in view of U.S. Patent No. 5,743,115 to HASHIMOTO. SMITH, BUGNACKI and YOUN, *supra*, disclose the claimed invention with the exception of providing a display which displays the measured load weight/mass. HASHIMOTO teaches that it is known to provide a washing machine with a display which provides user with load size info, the load size being determined by sensing means (see Figure 2 and relative associated text).

Therefore, the position is taken that it would have been obvious to one skilled in the art at the time the invention was made to provide the washing machine in the combination of SMITH, BUGNACKI and YOUN with the display of HASHIMOTO to yield the predictable results of displaying the weight of the load size to the user.

22. Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over SMITH in view of BUGNACKI, YOUN and HASHIMOTO, as applied to claim 52 above, and further in view of DE 4219298 to STAMMINGER et al. ("STAMMINGER"). SMITH, BUGNACKI, YOUN and HASHIMOTO, *supra*, disclose the claimed invention with the exception of an alarm/warning for indicating an overload. STAMMINGER teaches that it is known in the washing machine art to provide a washing machine which senses laundry weight with a warning system that releases a warning signal when an overload

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is detected (see entire document, for instance, the abstract). Therefore, the position is taken that it would have been obvious to one skilled in the art at the time the invention was made to provide the washing machine in the combination of SMITH, BUGNACKI, YOUN and HASHIMOTO with the warning alarm of STAMMINGER to yield the predictable results of warning a user of an overloaded washing machine to prevent damage to the washing machine.

Allowable Subject Matter

23. Claims 37-40 & 43-49 are allowed. The reason for allowance is that the prior art of record does not teach or suggest the claimed first and second lever arm, hinge joint and rail configuration.

Conclusion

24. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

25. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph L. Perrin, Ph.D. whose telephone number is (571)272-1305. The examiner can normally be reached on M-F 8:00-4:30.

27. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael E. Barr can be reached on (571)272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

28. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph L. Perrin/
Joseph L. Perrin, Ph.D.
Primary Examiner
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JLP